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 13 of Holders of Executory Contract Rights through  
 14 USA Commercial Mortgage Company

E-Filed On September 11, 2006

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF NEVADA**

10 In re:  
 11 USA COMMERCIAL MORTGAGE COMPANY,  
 12 Debtor.

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

13 In re:  
 14 USA CAPITAL REALTY ADVISORS, LLC,  
 15 Debtor.

JOINTLY ADMINISTERED  
 Chapter 11

16 In re:  
 17 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 18 Debtor.

**OFFICIAL COMMITTEE OF  
 DIRECT LENDERS' RESPONSE  
 TO MOTION TO AMEND  
 DEBTOR'S PROTOCOL FOR  
 CONTINUING DISTRIBUTIONS  
 AND INTERIM HOLDBACKS**

19 In re:  
 20 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 21 Debtor.

Date: September 13, 2006  
 Time: 9:30 a.m.

22 In re:  
 23 USA SECURITIES, LLC,  
 24 Debtor.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

25 The Official Committee of Holders of Executory Contract Rights through USA  
 26 Commercial Mortgage Company (the "Direct Lenders Committee"), by and through its counsel,  
 27 the law firm of Gordon & Silver, Ltd. ("G&S"), hereby submits its Response (the "Response") to  
 28

1 the Motion to Amend Debtor's Protocol for Continuing Distributions and Interim Holdbacks (the  
 2 "Motion") filed by the Official Unsecured Creditors' Committee for USA Commercial Mortgage  
 3 Company ("Unsecured Committee").

4 1. Relief Requested by the Unsecured Creditors' Committee.

5 Pursuant to the Motion, the Unsecured Committee seeks two forms of relief. The first is  
 6 to establish a briefing schedule to determine what sums, if any, over the above servicing fees and  
 7 other amounts due under the individual loan servicing agreements should be charged against  
 8 distributions to Direct Lenders. Secondly, the Unsecured Committee seeks to modify the  
 9 monthly interim distribution order.

10 2. The Unsecured Creditors' Efforts to Surcharge Direct Lenders.

11 The unresolved issue of surcharging Direct Lenders' collateral has cast a shadow over  
 12 these proceedings since its inception. The Direct Lenders Committee supports an orderly  
 13 briefing schedule to finally resolve the issue in order to bring these proceedings to a more rapid  
 14 conclusion. However, resolution will require an affirmative motion filed which is noticed and  
 15 served upon all Direct Lenders thereby insuring due process requirements and the participation  
 16 by all parties in interest.

17 3. Modification of the Interim Distribution Order.

18 On August 24, 2006, the Court entered its interim Order Granting Debtors' Motion to  
 19 Distribute Funds ("Interim Distribution Order") by which this Court sought to strike a balance  
 20 between preserving assets that may constitute property of Debtors' bankruptcy estates and  
 21 making distributions to Direct Lenders and fund investors who, in many instances, need such  
 22 funds to prevent financial ruin. It is fair to say that the Interim Distribution Order did not fully  
 23 satisfy any of the Committees, yet a consensus was reached for the benefit of the common good.  
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1                   The Direct Lenders' Committee supports the Motion to the extent that the Debtors and  
 2 Committees are able to consensually reach a form of order. However, no such modification  
 3 should be entered by this Court to the extent it is not approved by each of the various  
 4 constituencies. In the event of disagreement, the current Interim Distribution Order should  
 5 remain in effect and subject to modification only upon full briefing and hearing in the ordinary  
 6 course.  
 7

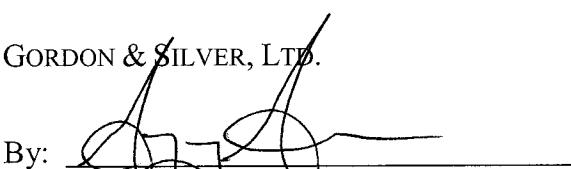
8                   Generally, the Direct Lenders Committee concurs with the concepts contained in the  
 9 Unsecured Committee's proposed language. Moreover, based upon conversations with counsel,  
 10 the Direct Lenders Committee remains confident a consensual order can be put in place.  
 11 However, the Direct Lenders Committee has concerns based upon the language proposed by the  
 12 Unsecured Committee. For example, paragraph 1.1 contemplates withholding from payment  
 13 "all other fees and costs charged and collected pursuant to the applicable loan service  
 14 agreements." As subsequently explained, the Unsecured Committee contemplates that Debtors'  
 15 professionals will allocate, where appropriate, their collection costs to be allocated as an  
 16 expense under individual Loan Service Agreements.  
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18                   The Direct Lenders Committee agrees that on a prepetition basis, certain collection costs  
 19 would be allocated to Direct Lenders under the terms of individual Loan Service Agreements.  
 20 For example, outside of bankruptcy, in the event that USACM had commenced foreclosures and  
 21 advanced outside legal expenses and appraisal fees in their efforts to recover on behalf of the  
 22 Direct Lenders, the Loan Service Agreements contemplate Direct Lenders will reimburse  
 23 USACM for such advances. On a post-petition basis, similar collection costs remain the  
 24 obligation of individual Direct Lenders. However, USACM, at its expense, is obligated to  
 25 perform a great number of services (including accounting), for which they are compensated by  
 26 way of the 1-3% service fees. To the extent that Mesirow or Debtors' legal professional are  
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1 performing administrative duties for which USACM is compensated for under loan service fees,  
2 such fees may not be allocated or recovered against the Direct Lenders.

3 Based upon conversations with the various constituencies, it appears as if there will be  
4 agreement upon the terms of a modified interim distribution order. However, as set forth above,  
5 this Court should not enter the modified interim distribution order to the extent it is not  
6 approved by the Debtors and the four Official Committees.  
7

8  
9 DATED this 11th day of September, 2006.

10 GORDON & SILVER, LTD.  
11  
12 By:   
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